IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.290 OF 2006

1. Shri Shivaji Bhiva Kale and anr. .. Appellants.
Vs
1.Shri Dnynoba sahadu Kale and ors. .. Respondents.

Mr A.M.Patankar, for the appellants.
Mr N.P.Deshpande, for respondent no.1.

CORAM : **D.B.BHOSALE,J.**
DATE : 26/02/2007
PC:

1. Heard the learned counsel for the parties.

2. This appeal is directed against the concurrent judgments of the courts below, by which a suit filed by the appellants for declaration and injunction has been dismissed. The appellants claim that the suit properties are their self-acquired properties and the respondents-defendants have no concern with the same. Parties to the present appeal are grand children of one Rama Kale, who died in 1940 leaving behind his four sons, namely, Mahadu, Sahadu, Maruti and Bhiwa. The appellants-plaintiffs represent the branch of Maruti and Bhiwa. According to the respondents-defendants, the suit properties are the joint family properties and they were originally standing in the name of Rama and they are inherited by all the parties to the suit. Mr Patankar, learned counsel for the appellants, submitted

that Rama had no concern with the properties and, therefore, the claim of Maruti and Bhiwa that the properties are their self acquired properties, should be accepted. The submission of Mr Patankar, deserves to be rejected outright in view of the concurrent findings recorded by the courts below and more particularly the observations made in paragraph 9 of the appellate court judgment. Paragraph 9 of the appellate court judgment reads thus;

> "9. It is evident from the certified extract of the mutation entries at Exh.91 and 92 that after the demise of Rama, the lands of the joint families were mutated in the name of his son Mahadu and after the demise of Mahadu, the landed properties were mutated in the names of Maruti and Bhiwa. It is thus clear from the aforesaid evidence that the house properties are joint family properties of both the parties. Admittedly, the suit for partition of the joint family properties of the plaintiffs and defendant nos 1 to 4 is pending. Considering the above discussed evidence I hold that the house properties are joint family properties of the plaintiffs and the defendant nos 1 to 4. It then follows that the defendant no.1 is the co-owner of the house properties. He has equal right to enjoy the house properties along with plaintiffs and defendant nos 2 to 4. There is nothing on record to show that there is any intention or move of the defendant no.1 to alienate any of the house properties. In these circumstances, the plaintiffs cannot claim the reliefs of declaration and perpetual injunction against the defendant no.1."

In my opinion, no substantial question of law is

involved in the appeal. Keeping that in view and considering the concurrent findings of facts and as I find sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court to disturb the findings of fact, the second appeal fails and dismissed as such.

(D.B.BHOSALE,J.)